

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 02-0567

Sales and Use Tax

For The Period: 1999-2001

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ISSUES

I. Sales and Use Tax: Tax Records

Authority: IC 6-2.5 *et seq.*; IC 6-8.1-5-1(a); IC 6-8.1-5-4(a); IC 6-8.1-5-1(b)

The taxpayer protests the proposed assessment of retail sales tax.

II. Tax Administration: Penalty and Interest

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2; IC 6-8.1-10-1(e)

The taxpayer protests the imposition of a negligence penalty and interest.

STATEMENT OF FACTS

Taxpayer operated a retail vehicle dealership in Indiana. In January 2001 a fire occurred at the taxpayer's place of business, destroying most of its sales records. The taxpayer protests the Department's proposed sales tax assessment for the years 1999 and 2000. The taxpayer disagrees with the Department's reliance on information provided by the Bureau of Motor Vehicles (BMV).

I. Sales and Use Tax: Tax Records

DISCUSSION

As noted, the taxpayer lost most of its business records for 1999 and 2000 in a fire. Given this, the Auditor relied on BMV information to come up with a proposed assessment. The Auditor describes the BMV information relied upon thusly:

The purchaser presents the ST-108 to the Bureau of Motor Vehicles (BMV) when the vehicle is registered. The BMV records the ST-108 data, including sales tax collected, using the dealer identification number as an account number. At year-end, all sales tax collected by that dealer is totaled. Those year-end reports are available to [the] Indiana Department of Revenue.

The Auditor goes on to describe her methodology:

Taxpayer was given the BMV list of vehicle sales attributed to their dealer number and asked to identify them using the Vehicle Identification Number (VIN). Since a large volume of records was lost in a fire, taxpayer prepared a list of vehicle sales that were definitely their sales, giving all the information available. Taxpayer's list included vehicles sold to out-of-state purchasers and leased vehicles. Audit compared taxpayer's list to the BMV list.

After doing the comparing, over a hundred vehicles in each year were "unidentified." Or as the taxpayer puts it,

For 1999 and 2000 ... the Department did find material discrepancies between the amounts reported by the taxpayer on the Form ST-103 and certain records of the Indiana Bureau of Motor Vehicles ("BMV").

Regarding the unidentified vehicles, the Auditor had a title check performed, for the year 2000, through the BMV. The Auditor then "attempted to contact the registered owner of each vehicle." As the Auditor describes it:

Some registered owners have an unlisted telephone number and others have no listing at all. Eventually, forty-one owners were contacted by audit. All but one confirmed they had purchased their vehicle at taxpayer's dealership. That one vehicle was removed from the BMV list. Of those customers not contacted, all resided in [taxpayer's county] or neighboring counties; those sales remain on the taxpayer's BMV list.

The Auditor further notes that additionally "[t]wo obvious keying errors were made by BMV when the sales tax was entered." The Auditor "adjusted" those figures to reflect "the actual tax collected."

The taxpayer states that

[t]he Department admits that "obvious keying errors were made by the BMV when the sales tax was entered." This alone makes any reliance on the BMV records unreasonable. In all likelihood, there were additional keying errors that were not obvious to the auditor

The taxpayer also states that the BMV “probably [made] additional keying errors” while “entering the sales tax amount from the ST-108s” and that the dealer number data may have also suffered from errors.

The taxpayer goes on to note that it used “the same procedures to report 1999 and 2000 tax liability as it did to report its 2001 tax liability.” The taxpayer concludes that since the 2001 records were deemed accurate by audit, and that there were what the taxpayer characterizes as “manifest errors in the BMV records” that another method should be used. The taxpayer proposes two such methods: (1) accept its 1999 and 2000 reported tax; or (2) accept its alternate records.

IC 6-8.1-5-4(a) requires the taxpayer to “keep books and records so that the department can determine the amount, if any, of the person’s liability for that tax by reviewing those books and records.” The taxpayer’s records were destroyed in a fire. The Department, based on IC 6-8.1-5-1(a), made a “proposed assessment of the amount of unpaid tax on the basis of the *best information available* to the department.” (*Emphasis added*) The taxpayer argues in essence that the BMV information is not the best information available.

First the taxpayer argues that the Department should accept its reported tax liability for 1999 and 2000:

The taxpayer used the same procedures to report its 1999 and 2000 tax liability as it did to report its 2001 tax liability. Based upon the undisputed accuracy of the taxpayer’s 2001 records, and the manifest errors in the BMV records, the Department should accept the taxpayer’s reported amount of tax due for 1999 and 2000.

The taxpayer’s position--in a sense--begs the question, since it presupposes there were no discrepancies for 1999 and 2000 when in fact the Auditor found discrepancies. The Auditor reviewed the year-end reports “from the BMV and [the] Indiana Department of Revenue” and found only 2001 to be “materially correct.”

Next, the taxpayer argues that its additional records should be used. The taxpayer describes these records as follows:

These records survived the fire because they were in the dealership’s safe. They were rejected by the auditor, however, because they did not contain vehicle identification numbers (“VIN numbers”).

The taxpayer goes on to state that VIN numbers were obtained for “substantially all of the vehicles” by using service records. However the alternate records provided by the taxpayer show neither the sales amount, nor the tax collected. And as the taxpayer stated, it does not include all of the VIN numbers.

It should be kept in mind that under IC 6-8.1-5-1(b) the taxpayer bears the burden of proving the proposed assessment is wrong, and that the Department's proposed assessment is considered "prima facie evidence that the department's claim ... is valid." The steps outlined above that Auditor used (*viz.*, BMV information, title search, verifying with a large block of purchasers that they in fact purchased from the taxpayer, etc.) did result in the best information available being used for the audit.

FINDING

Taxpayer's protest is denied.

II. Tax Administration: Penalty and Interest

DISCUSSION

Indiana Code 6-8.1-10-2.1(d) states, in part, that if "the deficiency determined by the department was due to reasonable cause and not willful neglect, the department shall waive the penalty." Regulation 45 IAC 15-11-2 also states,

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer.

The taxpayer states that it was not negligent and that it "has always made a diligent effort to timely pay the proper tax." The taxpayer also states that business records were lost in the fire.

The taxpayer in correspondence also mentions it is protesting the imposition of interest. Pursuant to IC 6-8.1-10-1(e) the Department may not "waive the interest imposed under this section."

FINDING

The taxpayer's penalty protest is sustained; the protest of the interest is denied.